APPENDIX A

United States District Court for the District of Columbia

Habeas Corpus No. 87-55

UNITED STATES OF AMERICA ON THE RELATION OF CLARICE B. COVERT *vs.* CURTIS REID, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL

RULING OF THE COURT

The COURT. In the present case, the petitioner while residing with her husband, a member of the United States Air Force in England, took the life of her husband and, of course, was subject to court martial under the provisions of Section 551 of Title 50 of the United States Code, the Air Force taking the position that this petitioner was a person accompanying the armed services abroad within the terms of this provision of the Code.

The case raises the very interesting question again of whether this petitioner as a civilian is entitled to the constitutional guarantees of the Fifth and Sixth Amendments or whether she was properly tried by court martial.

The Fifth Amendment, of course, exempts from its provision as to due process those cases arising in the land or naval forces. The law appeared, until a few weeks ago, to have been rather definitely settled as to what constituted a case arising within the armed or naval forces, but the

decision of the Supreme Court of the United States in the case of the United States of America ex rel. Andrey M. Toth, petitioner, vs. Donald A. Quarles, Secretary of the Air Force, decided on November 7, 1955, has virtually turned inside out a great many earlier decisions especially in Courts of Appeal and in United States District Courts.

It is true that the Toth case on several occasions refers specifically to the fact that Toth was an ex-soldier. He is described as a civilian ex-soldier. But the teaching of the case insofar as it relates to the right of the person to his constitutional guarantees in the face of court martial charges is that Toth was a civilian.

It does seem to this Court that the significant phraseology of the Toth case must be predicated upon the understanding that the Supreme Court is dealing with the rights of a civilian. The Supreme Court has decided that a civilian, even though he was in the military service at the time he committed a crime, is entitled to a trial by the civil courts. In short, the Supreme Court says—a civilian is entitled to a civilian trial.

Applying this principle to the present case, the Court must conclude that in this case the petitioner appears to be entitled to a trial by the civil courts. The Court believes that it is required to grant the writ of habeas corpus in the present proceeding.

The Court recognizes that there are great difficulties inherent in the Court's ruling today, because admittedly the military services have major and difficult problems in dealing not only with

the civilians who are members of the families of the armed forces on foreign stations.

I do believe that the problem created is one which is of ready solution by the Congress. There appears to be no difficulty in enacting statutes which would confer upon the District Courts of the United States the jurisdiction to try cases arising on these foreign stations in the same manner that crimes on the high seas are tried at the present time.

It seems that the Congress could legally declare that a civilian could be tried in the first jurisdiction in which the civilian is brought or in the jurisdiction where the civilian is found, in the same manner that the statutes now provide for this type of jurisdiction in cases involving crimes on the high seas.

I don't think the Court's observations in this regard are essential to its disposition of the present case. The Court will grant the writ in the present case.

374684—56——4

APPENDIX B

United States District Court
For the Southern District of West Virginia

Habeas Corpus No. 1726

UNITED STATES OF AMERICA ON THE RELATION OF WALTER KRUEGER *v.* NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA

John C. Morrison, Esq., Attorney at Law, 305 Morrison Building, Charleston 22, West Virginia; Frederick Bernays Wiener, Esq., Attorney at Law, 1023 Connecticut Avenue, NW., Washington 6, D. C.; Adam Richmond, Esq., Attorney at Law, 7816 Glenbrook Road, Bethesda, Maryland, for Relator.

Duncan W. Daugherty, United States Attorney; Percy H. Brown, Assistant United States Attorney; Lt. Colonel James W. Booth, JAGC, Judge Advocate General's Corps, United States Army; Lt. Colonel Cecil L. Forinash, JAGC, Judge Advocate General's Corps, United States Army, for Respondent.

BEN MOORE, *District Judge.*

OPINION

On January 10, 1953, Mrs. Dorothy Krueger Smith was convicted by a United States Army general court-martial, sitting in Tokyo, Japan, of the premeditated murder of her husband,

Colonel Aubrey D. Smith. The killing occurred on the night of October 3 or early morning of October 4, 1952, at the quarters occupied by the couple within the area of the Washington Heights Housing Project.

Mrs. Smith was sentenced to imprisonment for life. She appealed through all available military channels, but her conviction and sentence were finally affirmed by the Court of Military Appeals on December 30, 1954. She is now held as a prisoner in the Federal Reformatory for Women, a United States Government Penal Institution located at Alderson, in the Southern Judicial District of West Virginia. Her father, Lieutenant General Walter Krueger, U. S. Army, retired, filed a petition with this Court on December 9, 1955, praying for a writ of habeas corpus on her behalf, and for her release from imprisonment on the ground that the court-martial lacked jurisdiction to try her.

I awarded the preliminary writ, and on December 20, 1955, Mrs. Smith was brought into court at Charleston by the respondent, Nina Kinsella, Warden of the institution where she is confined. The only evidence, aside from the allegations and admissions in the petition and return, were the certified record of the entire proceedings in the military courts and boards, both trial and appellate, and a copy of the petition recently filed in the United States District Court for the District of Columbia in the case of *Clarice B. Covert* vs. *Curtis Reid, Superintendent of the District of Columbia jail.* Counsel were given unlimited time to present their arguments, as well as time

to file further briefs in addition to those submitted prior to the hearing.

It is pertinent to observe here that Brigadier General Onslow S. Rolfe, Commander of Headquarters and Service Command, Far East Command, detailed several officers from other commands to serve on the court-martial, among whom was Major General Joseph P. Sullivan. General Sullivan's service was with the concurrence of his commanding officer, Lieutenant General Mark Clark, Commander in Chief, Far East Command. All the other officers who were to sit on the court-martial were subordinate in rank to General Rolfe.

Mrs. Smith, who was represented at the trial and in all stages of her appeal by Brigadier General Adam Richmond, a retired officer of long legal and military experience, made no objection to the composition of the court-martial before any military court. The challenge is brought forth at this hearing for the first time.

In attacking the jurisdiction of the court-martial, petitioner advances two arguments:

1. That the court was illegally constituted, in that one of the officers who composed it was a Major General, whereas the convening officer was a Brigadier General;

2. That Mrs. Smith, being a civilian, was not subject to the Code of Military Justice, under the circumstances which prevailed at the time of the alleged offense and at the time of her trial.

The requirements for eligibility to sit as a member of a general court-martial are set out in Article 25 of the Uniform Code of Military Justice (50 U. S. C. 589) as follows:

> Any officer on active duty with the armed forces shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

There is thus no doubt that Major General Sullivan was eligible in the ordinary sense of the word, to serve as a member of a general court-martial. It is argued by counsel for petitioner that "eligibility" necessarily includes inferiority in rank to the convening officer; and that, since Brigadier General Rolfe, being subordinate in rank to Major General Sullivan, had no authority to order the latter to do anything, he could not therefore make him a member of a general court-martial.

At most, this argument turns on a mere technicality. It is not even pretended that Mrs. Smith suffered any disadvantage, or that her rights were in any way affected by the presence of Major General Sullivan as a member of the court-martial. Actually, General Sullivan was acting under the orders of his superior officer, General Mark Clark. The Manual for Courts-Martial provides for situations of this kind by the following language (see Manual for Courts-Martial, subparagraph 4f).

> Appointment of members and law officers from other commands of the same armed force.—The convening authority may, with the concurrence of their proper commander, appoint as members of a court-martial * * * eligible persons of the same armed force who are not otherwise under his command. Concurrence of the proper

commander may be oral and need not be evidenced by the record of trial.

General Rolfe's convening of the court was an administrative, as distinguished from an operational command. In civil affairs, it would be regarded merely as an appointment, and it is so referred to in the above excerpt from the Manual for Courts-Martial. I can find nothing in the Code of Military Justice to indicate that in performing such a function distinctions of rank are important. Possibly General Sullivan might have had grounds based on seniority of rank for declining to sit on the court; possibly Mrs. Smith might have objected at the time to his sitting; but he having willingly acceded to the convening order, and she not having objected at any time to his sitting as a member of the court-martial, I hold that the objection to General Sullivan as a member of the court-martial, if there was a substantial objection, has been waived, and cannot now be raised. The applicable rule of decision is found in the case of *Swaim* v. *United States*, 165 U. S. 553, rather than in *McClaughry* v. *Deming*, 186 U. S. 49, relied on by petitioner.

Having concluded that the technical or procedural objection to the jurisdiction of the court-martial is without merit, I am forced to consider the constitutional question raised by the petitioner.

Counsel for petitioner very frankly says that the present effort to procure Mrs. Smith's release on this writ of habeas corpus stems from the recent decision of the United States Supreme Court in the case of *United States of America*,

ex rel., *Andrew M. Toth*, vs. *Donald A. Quarles, Secretary of the United States Air Force*, 76 Sup. Ct. 1 (1955), followed by the action of the District Court of the District of Columbia in freeing Mrs. Clarice Covert in circumstances very similar to those which surround Mrs. Smith. The *Covert* case has not yet been reported.

I think the *Toth* case is readily distinguishable. Toth was a civilian residing in the continental United States, who, at the time charges were made against him, had no connection with the armed forces. The decision in that case turned on the right of Toth to claim the protection of those Constitutional guaranties which secure to persons accused of crime in this country, except those who are in the land or naval forces, the traditional safeguards which accompany every criminal trial in the civil courts. Chief among these are the right to have the charge, if a felony, presented to a grand jury, the right to trial by jury, and to have these rights passed on by courts whose judges are a part of our Constitutional system of civil courts. Not all of these safeguards are or can be provided in a trial by court-martial.

In the *Covert* case the status of the petitioner was that of a person who, having been charged and convicted by a United States Army court-martial in a foreign land, was now within the borders of the United States, her conviction reversed, and she, no longer a follower of the army, merely awaiting trial on the original charge. Judge Tamm thought that under those circumstances the principle announced in the *Toth* case obliged him to grant her freedom pursuant to the

writ of habeas corpus. I do not think it necessary, because of the different circumstances in the case before me, either to adopt or reject his reasoning.

Mrs. Smith's situation differed from that of Toth in at least two significant respects:

(1) She was not living in the United States, nor present there when she was charged with the murder of her husband;

(2) She was connected with the army as a person "accompanying the armed forces without the continental limits of the United States;" both when she committed the act and when she was arrested and tried for it.

It may be useful at this point to examine the sections of Article 2 of the Code of Military Justice, "Title 50, U. S. C. A., § 552," which specify the conditions under which persons accompanying the armed forces may be tried by court-martial.

The pertinent sections of Article 2 read as follows:

> The following persons are subject to this (chapter):
> * * *
> (10) In time of war, all persons serving with or accompanying an armed force in the field;
> (11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party, or to any accepted rule of international law, all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States.
> * * *

It is to be observed that Article 2 (10) gives unlimited court-martial jurisdiction over followers of the army in time of war and in the field. While it is not argued by counsel for petitioner that Article 2 (10) in any way exceeds the Constitutional power of Congress, it is proper, I think, to point out the distinctions drawn by Congress itself between Article 2 (10) and Article 2 (11).

The reason for such a broad grant of court-martial jurisdiction in time of war is obvious. It is essential that the operations of an army in the field be unobstructed by the acts of any person, whatever his status. Even if the Constitution were silent on the subject, military commanders in the field of war would nevertheless have the usual and necessary court-martial powers by virtue of the law of war itself. Congress having been granted in the Constitution the powers to "declare war" and to "raise and support armies," as well as to "make rules for the government and regulation of the land and naval forces," the last mentioned power, insofar as it is to operate in time of war, is referable to the others, and is co-extensive in scope with the law of war under which court-martial jurisdiction is permitted over certain classes of civilians. *Madsen* v. *Kinsella*, 343 U. S. 341 (1952).

Article 2 (11) is not limited to a time of war or to the field of action. It purports to extend the coverage of the Code of Military Justice (and hence the jurisdiction of courts-martial) to all persons "accompanying the armed forces" abroad. This coverage, however, is conditional. If some accepted rule of international law or the

terms of some treaty or agreement to which the United States is a party are applicable to a particular case, then by its own limitations Article 2 (11) does not come into play.

Now, it is a well recognized maxim of the law of nations that a citizen of one country who commits a local crime in another country is amenable to the laws of the latter. In the absence of a treaty he is entitled to claim no extra-territorial rights. If he believes himself to have been unfairly dealt with, his only recourse is through diplomatic channels. From this maxim flows the principle, recognized by the Supreme Court in the case of *In re Ross*, 140 U. S. 453 (1891), and never repudiated in any case that I have found, that the United States Constitution gives no protection to persons accused of committing local crimes in foreign countries.

Counsel for petitioner, in his brief and in argument, has cited several cases from which he argues that the doctrine that the Constitution does not "follow the flag" is outmoded, and is not now the law. *United States* v. *Flores*, 289 U. S. 137 (1933); *Blackmer* v. *United States*, 284 U. S. 421 (1932); *United States* v. *Bowman*, 260 U. S. 94 (1922); *Jones* v. *United States*, 137 U. S. 202 (1890); *Best* v. *United States*, 184 F. 2d 131 (1st Cir. 1950). On examination of those cases it is found that in every instance the crime involved was one denounced by some statute of the United States, and triable in some one of our District Courts. In no instance has it been even contended that a person accused of a purely local crime in a foreign country may claim any of the procedural

rights guaranteed in the Constitution of the United States.

It is plain, therefore, that the rule of *Toth* v. *Quarles* does not apply here. Still, as I have indicated, it is not enough to find that the provisions of our Bill of Rights and other prohibitory sections of our Constitution did not stand between Mrs. Smith and her trial by court-martial. If the jurisdiction is to be sustained, we must go farther, and discover in that instrument an affirmative grant of Congressional power, either expressly or by necessary implication.

It is in evidence that in the year 1952 the newly reorganized Government of Japan entered into a treaty with the United States, which was duly ratified by the Senate. By an administrative agreement implementing that treaty, the Japanese Government ceded to the United States, through its military courts and authorities, all jurisdiction to try offenses committed in Japan by dependents of members of the armed forces, excluding those of Japanese nationality. Had this treaty been in effect at the time Article 2 (11) of the Code of Military Justice was enacted, it might be cited as the source of Congressional power to pass this act; but it would scarcely be contended, I think, that a piece of legislation, if it were void for lack of constitutional authority when passed, could be validated by a later treaty, even though Congress might subsequently act freely in that field. However, the treaty did remove the limitations which in its absence would have prevented Article 2 (11) from taking effect, in that upon the ratification of the treaty there was no longer any "accepted rule of international

law" or any treaty to the contrary which interfered with its operation.

I am driven to the conclusion that constitutional authority for subjecting civilians accompanying the armed forces to court-martial discipline in time of peace, if such exists, must be found in Article 1, Section 8 of the Constitution, by one of the clauses of which section the power is bestowed on Congress "to make rules for the government and regulation of the land and naval forces," as supplemented by the "necessary and proper" clause.

Courts are slow to reject as unconstitutional a law which has been duly passed by Congress. Congressmen as well as Judges take an oath to support the Constitution of the United States. It is not probable that in any session of that body there should be a dearth of members who are themselves expert in the field of Constitutional law. It is not to be lightly supposed, therefore, that Congress would enact such an important bit of legislation as that which we have under consideration without a careful inquiry into the scope of its own Constitutional power. True it is that if a law of Congress clearly transgresses some positive prohibition expressed in the Constitution it is the duty of a court to strike it down; but where, as here, the problem is merely to find authority for an act which is not forbidden by that instrument, we must proceed more cautiously. In view of the "necessary and proper" clause, we must weigh in the scales in favor of the law's validity every circumstance which may be reasonably assumed to have influenced its enactment. As was said by Chief Justice Marshall in the cele-

brated case of *McCulloch v. Maryland*, 4 Wheat. 316 (U. S. 1819):

> We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional * * * where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.

Since the end of World War II segments of the Armed Forces of the United States have been stationed in many nations throughout the world. In the interest of keeping the morale of the troops on a high level, the Government has encouraged the wives of soldiers to accompany them and live with them at their various posts, and has expended vast sums of money in transportation and maintenance charges for that purpose. It was said in argument and not disputed that there are now no fewer than a quarter of a million civilians of all descriptions accompanying

the Armed Forces without the continental limits of the United States and the territories mentioned in Article 2 (11) of the Code of Military Justice. In the existing circumstances, if these civilians are to be exempt from discipline by the military forces in the only available way, namely, by court-martial procedure, a most serious situation is presented. They must then either be subject in all respects to the local laws of the countries where they are stationed, or else they are left free from all restraints whatsoever.

Though I reject the contention of counsel for respondent that a civilian in Mrs. Smith's situation is "part" of the Armed Forces, nevertheless I cannot say with certainty that the power of Congress to provide for court-martial discipline of those civilians accompanying the Armed Forces abroad is not necessarily and properly incident to the express power "to make rules for the government and regulation of the land and naval forces." Neither the *Toth* case nor any other expression by the Supreme Court compels such a conclusion. Therefore, I must uphold Article 2 (11) of the Code of Military Justice in its entirety.

The writ of habeas corpus will be discharged.

APPENDIX C

UNITED STATES OF AMERICA (VISITING FORCES) ACT, 1942

(5 & 6 Geo. 6)

CHAPTER 31

An Act to give effect to an agreement recorded in Notes exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America, relating to jurisdiction over members of the military and naval forces of the United States of America. [6th August 1942.]

Whereas His Majesty, in exercise of the powers conferred on Him by subsection (3) of section one of the Allied Forces Act, 1940, and of all other powers enabling Him in that behalf, has been pleased, by Order in Council, to make provision defining the relationship of the authorities and courts of the United Kingdom to the military and naval forces of the United States of America who are or may hereafter be present in the United Kingdom or on board any of His Majesty's ships or aircraft, and facilitating the exercise in the United Kingdom or on board any such ship or aircraft of the jurisdiction conferred on the service courts and authorities of the United States of America by the law of that country:

And whereas the Notes relating to jurisdiction over members of the said forces set out in the

Schedule to this Act have been exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America:

And whereas it is expedient to give effect to the agreement recorded by the said Notes:

Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1) Subject as hereinafter provided, no criminal proceedings shall be prosecuted in the United Kingdom before any court of the United Kingdom against a member of the military or naval forces of the United States of America:

Provided that upon representations made to him on behalf of the Government of the United States of America with respect to any particular case, a Secretary of State may by order direct that the provisions of this subsection shall not apply in that case.

(2) The foregoing subsection shall not affect any powers of arrest, search, entry, or custody, exercisable under British law with respect to offences committed or believed to have been committed against that law, but where a person against whom proceedings cannot, by virtue of that subsection, be prosecuted before a court of the United Kingdom is in the custody of any authority of the United Kingdom, he shall, in accordance with such general or special directions as may be given by or under the authority of a Secretary of State, the Admiralty, or the Minister for Home Affairs in Northern Ireland, for the

purpose of giving effect to any arrangements made by His Majesty's Government in the United Kingdom with the Government of the United States of America, be delivered into the custody of such authority of the United States of America as may be provided by the directions, being an authority appearing to the Secretary of State, the Admiralty, or the Minister, as the case may be, to be appropriate having regard to the provisions of any Order in Council for the time being in force under the Act hereinbefore recited and of any orders made thereunder.

(3) Nothing in this Act shall render any person subject to any liability whether civil or criminal in respect of anything done by him to any member of the said forces in good faith and without knowledge that he was a member of those forces.

2.—(1) For the purposes of this Act and of the Allied Forces Act, 1940, in its application to the military and naval forces of the United States of America, all persons who are by the law of the United States of America for the time being subject to the military or naval law of that country shall be deemed to be members of the said forces:

Provided that no person employed in connection with the said forces, not being a citizen or national of the United States of America, shall be deemed to be a member of those forces unless he entered into that employment outside the United Kingdom.

(2) For the purposes of any proceedings in any court of the United Kingdom, a certificate issued by or on behalf of such authority as may

be appointed for the purpose by the Government of the United States of America stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the military or naval law of the United States of America, shall be conclusive evidence of that fact.

(3) For the purposes of any proceedings in any court of the United Kingdom in which the question is raised whether a party to the proceedings is, or was at any time, a member of the military or naval forces of the United States of America, any such certificate as aforesaid relating to a person bearing the name in which that party is charged or appears in the proceedings shall, unless the contrary is proved, be deemed to relate to that party.

(4) Any document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of an authority described as appointed by the Government of the United States of America for the purposes of this section, shall be received in evidence, and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

3.—(1) His Majesty may by Order in Council direct that the foregoing provisions of this Act shall, subject to such adaptations and modifications as may be specified in the Order, have effect in any colony or in any British protectorate or in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United King-

dom, in like manner as they have effect in the United Kingdom.

(2) An Order in Council under this section may be revoked or varied by a subsequent Order in Council.

4. This Act may be cited as the United States of America (Visiting Forces) Act, 1942.

UNITED STATES OF AMERICA (VISITING FORCES) ACT, 1942

(5 & 6 Geo. 6)

SCHEDULE

NOTES EXCHANGED BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

No. W. 10338/13/64

FOREIGN OFFICE, S. W. 1.
27th July, 1942.

YOUR EXCELLENCY, Following the discussions which have taken place between representatives of our two Governments, His Majesty's Government in the United Kingdom are prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the Government of the United States that the Service courts and authorities of the United States Forces should, during the continuance of the conflict against our common enemies, exercise exclusive jurisdiction in respect of criminal offences which may be committed in the United Kingdom by members of those Forces, and they are ready to introduce in

Parliament the necessary legislation for this purpose.

2. It is appreciated, however, that cases may arise where for particular reasons the American authorities may prefer that their courts should not exercise the above jurisdiction, and His Majesty's Government would accordingly propose that in any case in which a written communication to that effect is received from the Diplomatic Representative of the United States it should be open to the appropriate British authority to restore the jurisdiction of the courts of the United Kingdom to deal with that case.

3. In view of the very considerable departure which the above arrangements will involve from the traditional system and practice of the United Kingdom there are certain points upon which His Majesty's Government consider it indispensable first to reach an understanding with the United States Government. I have accordingly the honour to invite Your Excellency to be so good as to lay the following enquiries and observations before your Government and to inform me of their attitude thereupon.

4. In the first place, the readiness of His Majesty's Government in the United Kingdom to agree to the exercise by United States Service courts of exclusive jurisdiction in respect of offences by members of their Forces is based upon the assumption that the United States Service authorities and courts concerned will be able and willing to try and, on conviction, to punish all criminal offences which members of the United States Forces may be alleged on sufficient evidence to have committed in the United Kingdom,

and that the United States authorities are agreeable in principle to investigate and deal with appropriately any alleged criminal offences committed by members of the United States Forces in the United Kingdom which may be brought to their notice by the competent British authorities, or which the American authorities may find to have taken place.

5. Secondly, His Majesty's Government will be glad if Your Excellency will confirm their understanding that the trial of any member of the United States Forces for an offence against a member of the civilian population would be in open Court (except where security considerations forbade this) and would be arranged to take place promptly in the United Kingdom and within a reasonable distance from the spot where the offence was alleged to have been committed, so that witnesses should not be required to travel great distances to attend the hearing.

6. Thirdly, His Majesty's Government propose that no member of the United States Forces should be tried in the United Kingdom by a Service Court of the United States of America, for an offence committed by him before 7th December, 1941.

7. Fourthly, while His Majesty's Government in the United Kingdom would not wish to make the arrangements in regard to jurisdiction over members of the United States Forces in this country dependent upon a formal grant of reciprocity in respect of United Kingdom Forces in the territory of the United States of America, I feel that Your Excellency will appreciate that the considerations which have convinced His Majesty's

Government in the United Kingdom that the interests of our common cause would be best served by the arrangements which they are prepared to make as regards jurisdiction over American forces in the United Kingdom would be equally applicable in the case of British forces which in the course of the war against our common enemies may be stationed in territory under American jurisdiction. It would accordingly be very agreeable to His Majesty's Government in the United Kingdom if Your Excellency were authorised to inform me that in that case the Government of the United States of America will be ready to take all steps in their power to ensure to the British forces concerned a position corresponding to that of American forces in the United Kingdom under the arrangements which His Majesty's Government are willing to make. The considerations indicated in paragraph 2 above would naturally apply and His Majesty's Government would be prepared to authorise the Diplomatic Representative of His Majesty in the United States to notify the competent American authorities in cases where the appropriate British authorities preferred not to exercise jurisdiction.

8. Fifthly, the proposal to ensure to the United States Service courts and authorities by legislation the exclusive exercise of jurisdiction in respect of criminal offences by members of the United States Forces in the United Kingdom is based upon the further assumption that satisfactory machinery will be devised between the competent American and British authorities for such mutual assistance as may be required in making investigations and collecting evidence in

respect of offences which members of the United States Forces are alleged to have committed, or in which they are alleged to be concerned. His Majesty's Government have no doubt that the United States Government will agree that it would as a general rule be desirable that such preliminary action should be taken by the British authorities, on behalf of the American authorities, where the witnesses or other persons from whom it is desired to take statements are not members of the United States Forces. Conversely, His Majesty's Government trust that they may count upon the assistance of the American authorities in connexion with the prosecution before British courts of persons who are not members of the United States Forces where the evidence of any member of these Forces is required or where the assistance of the American authorities in the investigation of the case (including the taking of statements from the American forces) may be needed.

9. His Majesty's Government in the United Kingdom are prepared to extend the proposed legislation where necessary to British Colonies and Dependencies under their authority, other than those British territories in which are situated the United States Military and Naval Bases leased in pursuance of the Agreement of 27th March, 1941, where the question of jurisdiction is already regulated by that Agreement. I accordingly propose that the foregoing paragraphs of this note, and your eventual reply, should be regarded as extending also to the arrangements to be made in the British Colonies and Depend-

encies to which the proposed legislation may be applied.

10. Finally, His Majesty's Government propose that the foregoing arrangements should operate during the conduct of the conflict against our common enemies and until six months (or such other period as may be mutually agreed upon) after the final termination of such conflict and the restoration of a state of peace.

11. If the foregoing arrangements are acceptable to the United States Government, I have the honour to propose that the present note and Your Excellency's reply be regarded as constituting an agreement between the two Governments to which effect shall be given as from the date on which the legislation to which I have already referred takes effect.

I have the honour to be,
With the highest consideration,
Your Excellency's obedient servant,
ANTHONY EDEN.

His Excellency
The Honourable
JOHN G. WINANT.

EMBASSY OF THE
UNITED STATES OF AMERICA,
London, 27th July, 1942.

No. 1919

SIR, I have the honor to refer to your note of July 27, 1942, in which you inform me that His Majesty's Government in the United Kingdom is prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the

Government of the United States that American authorities have exclusive jurisdiction in respect to criminal offences which may be committed in the United Kingdom by members of the American Forces. I now have the honor to inform you that my Government agrees to the several understandings which were raised in your note.

In order to avoid all doubt, I wish to point out that the Military and Naval authorities will assume the responsibility to try and on conviction to punish all offences which members of the American Forces may be alleged on sufficient evidence to have committed in the United Kingdom.

It is my understanding that the present exchange of notes is regarded as constituting an agreement between the two Governments to which effect shall be given as from the date on which the necessary Parliamentary authority takes effect.

Accept, Sir, the renewed assurance of my highest consideration.

JOHN G. WINANT.

The Right Honourable
ANTHONY EDEN, M. C., M. P.